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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,432	12/08/2003	Eran Nicodemus Bauer	P-6374.6(CIP)(CON)	2332

7590 04/20/2004

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EXAMINER

SUKMAN, GABRIEL S

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 04/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/730,432

Applicant(s)

BAUER ET AL.

Examiner

Gabriel S. Sukman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☒ Certified copies of the priority documents have been received in Application No. 09/171,480.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

Claims 1, 9, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,671,559 to Ludaesher et al. (hereinafter referred to as Ludaesher).

Ludaesher discloses all of the limitations of claim 1 including a firearm with a mechanism for firing a projectile with a first hand, a fluid ejection system for ejecting a stream of fluid in a direction parallel to the axis of the barrel that comprises a housing, nozzle, canister outlet, and the openings as claimed, and the front face of the housing having a hand-grip portion (the housing can be gripped by a hand). The functional language regarding the activation of the fluid release system does not hold patentable weight since the device of Ludaesher is clearly *capable* of being actuated by the thumb of the operator's second hand and since the positively claimed structure is clearly taught by Ludaesher.

The limitations of claim 9 are taught by Ludaesher as well. The fore-end comprises a rail, which is part of the bracket (16) when attached to the frame of the firearm. The housing is integrally attached to a bracket that includes slots (19, 21), which fit into the rails (29, 31).

The limitations of claim 10 are taught by Ludaesher as per the discussion above regarding claim 1 since the actuator buttons (23) of Ludaesher are considered to be the second trigger as claimed.

Claims 1-8, and 10 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 5,983,548 to Ludaesher (hereinafter referred to as '548).

The '548 patent discloses all of the limitations of claims 1 and 10 including a firearm with a trigger to fire a projectile and a housing and activation mechanism for ejecting a stream of fluid. The fluid ejection system is capable of being fired by the thumb of a user's second hand and therefore anticipates the claim.

The '548 patent anticipates claim 2 as well since Ludaesher teaches that the fluid releasing mechanism includes a pivoting arm which activates the ejection of the fluid.

Claim 3 is anticipated by the '548 patent since movement of the lever serves to move the canister towards the nozzle and hence moves the nozzle toward the outlet of the canister in relative terms.

Claim 4 is anticipated as well since the '548 patent discloses that the lever comprises a pad (see abstract) that is *engagable* by the thumb.

Claim 5 is anticipated by the '548 patent since there exists a plane that contains both the pad of the lever as well as the pivot axis of the trigger, as seen the figures.

Claim 6 is anticipated by the '548 patent since the trigger pad is below some plane including the pivot axis, depending upon perspective.

Claim 7 is anticipated by the '548 patent since the lever of Ludaesher extends through an opening in the rear face of the housing of the fluid ejection mechanism.

Claim 8 is anticipated by the '548 patent as per the discussion regarding claim 3.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 6,050,454 to Ludaesher et al.

U.S. Patent No. 5,787,628 to Teetzel

U.S. Patent No. 1,347,509 to Howe

U.S. Patent No. 1,333,268 to Masaites

U.S. Patent No. 3,938,708 to Burger

U.S. Patent No. 6,546,661 to Staubs

U.S. Patent No. 6,026,990 to Brunswig

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gabriel S. Sukman whose telephone number is (703)

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308-8508. The examiner can normally be reached on M-F, 8:30-6:00, every other Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Carone can be reached on (703) 306-4198. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

gss


MICHAEL J. CARONE
SUPERVISORY PATENT EXAMINER